

and provide a hearing in accordance with the Consolidated Rules of Practice and these supplemental rules of practice. If the Administrator denies a hearing under section 309(g)(4)(C) of the Act, the Administrator will provide to the petitioner, and publish in the FEDERAL REGISTER, notice of and the reasons for the denial.

[55 FR 23840, June 12, 1990]

§ 22.39 Supplemental rules of practice governing the administrative assessment of administrative penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(a) *Scope of these Supplemental rules.* These Supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), administrative proceedings for the assessment of any civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609). Where inconsistencies exist between these Supplemental rules and the Consolidated Rules (§§ 22.01 through 22.32), these Supplemental rules shall apply.

(b) *Subpoenas.* (1) The attendance and testimony of witnesses or the production of relevant papers, books, and documents may be required by subpoena. The Presiding Officer may grant a request for a subpoena upon a showing of—

- (i) The grounds and necessity therefor, and
- (ii) The materiality and relevancy of the evidence to be adduced.

Requests for the production of documents shall describe the evidence sought as specifically as practicable.

(2) Subpoenas shall be served in accordance with § 22.05(b)(1) of the Consolidated Rules of Practice.

(3) Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by the Agency.

(c) *Judicial review.* Any person who requested a hearing with respect to a Class II civil penalty under section 109 of CERCLA and who is the recipient of a final order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia or for any other circuit in which such person resides or transacts business. Any person who requested a hearing with respect to a Class I civil penalty under section 109 of CERCLA and who is the recipient of a final order assessing the civil penalty may file a petition for judicial review of such order with the appropriate district court of the United States. All petitions must be filed within 30 days of the date the order making the assessment was issued.

(d) *Payment of civil penalty assessed.* Payment of civil penalties finally assessed by the Regional Administrator shall be made by forwarding a cashier's check, payable to the "EPA, Hazardous Substances Superfund," in the amount assessed, and noting the case title and docket number, to the appropriate regional Superfund Lockbox Depository. Notice of payment must be sent by Respondent to the Hearing Clerk for inclusion as part of the administrative record for the proceeding in which the civil penalty was assessed. Interest on overdue payments shall be collected pursuant to the Debt Collection Act, 37 U.S.C. 3717.

[54 FR 21176, May 16, 1989]

§ 22.40 Supplemental rules of practice governing the administrative assessment of administrative penalties under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA).

(a) *Scope of these Supplemental Rules.* These Supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), administrative proceedings for the assessment of any civil penalty under section 325 for violations of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA). Where inconsistencies exist between these Supplemental rules and the Consolidated Rules, (§§ 22.01

through 22.32) these Supplemental rules shall apply.

(b) *Subpoenas.* (1) The attendance and testimony of witnesses or the production of relevant papers, books, and documents may be required by subpoena. The Presiding Officer may grant a request for a subpoena upon a showing of (i) the grounds and necessity therefore, and (ii) the materiality and relevancy of the evidence to be adduced. Requests for the production of documents shall describe the evidence sought as specifically as practicable.

(2) Subpoenas shall be served in accordance with §22.05(b)(1) of the Consolidated Rules of Practice.

(3) Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to request initiated by the Presiding Officer, fees shall be paid by the Agency.

(c) *Judicial review.* Any person against whom a civil penalty is assessed may seek judicial review in the appropriate district court of the United States by filing a notice of appeal and by simultaneously sending a copy of such notice by certified mail to the Administrator. The notice must be filed within 30 days of the date the order making such assessment was issued. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed.

(d) *Procedures for collection of civil penalty.* If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record. Interest on overdue payments shall be collected pursu-

ant to the Debt Collection Act, 37 U.S.C. 3717.

[54 FR 21176, May 16, 1989]

§22.41 Supplemental rules of practice governing the administrative assessment of civil penalties under Title II of the Toxic Substances Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

(a) *Scope of the Supplemental rules.* These Supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), all proceedings to assess a civil penalty conducted under section 207 of the Toxic Substances Control Act (the “Act”) (15 U.S.C. 2647). Where inconsistencies exist between these Supplemental rules and the Consolidated rules (§§22.01 through 22.32), these Supplemental rules shall apply.

(b) *Collection of civil penalty.* Any civil penalty collected under section 207 of the Act shall be used by the local educational agency for purposes of complying with Title II of the Act. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.

[54 FR 24112, June 5, 1989]

§22.42 Supplemental rules of practice governing the administrative assessment of civil penalties for violations of compliance orders issued under Part B of the Safe Drinking Water Act.

(a) *Scope of these supplemental rules.* These supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), all proceedings to assess a civil penalty under section 1414(g)(3)(B). Where inconsistencies exist between these supplemental rules and the Consolidated rules, these supplemental rules shall apply.

(b) *Definition of “person.”* In addition to the terms set forth in 40 CFR 22.03(a) that define *person*, for purposes of this section and proceedings under section 1414(g)(3)(B) of the Safe Drinking Water Act, the term *person* shall also include